

URGENCY ORDINANCE NO. 2940

**AN URGENCY ORDINANCE OF THE CITY OF EL MONTE
AMENDING CHAPTER 17.82 OF TITLE 17 (ZONING) OF
THE EL MONTE MUNICIPAL CODE TO ESTABLISH
UPDATED REGULATIONS AND PROCEDURES RELATED
TO WIRELESS COMMUNICATIONS FACILITIES AND
DECLARING THE URGENCY THEREOF, IN
ACCORDANCE WITH GOVERNMENT CODE SECTIONS
36934 AND 36937**

WHEREAS, pursuant to California Constitution Article XI, Section 7, the City of El Monte (the "City") has the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through its police power;

WHEREAS, the City's police power provides the right to adopt and enforce zoning regulations;

WHEREAS, state and federal law do not vest local governments with complete control over the regulation of wireless communications facilities, such as macro cell towers or so-called small cells,

WHEREAS, wireless service providers must apply to cities and counties for permits to build structures that support wireless telecommunications equipment, like antennae and related devices;

WHEREAS, wireless carriers must seek local approval to place additional telecommunications equipment on structures and facilities where that equipment already exists, which are referred to as collocations;

WHEREAS, California cities are preempted from regulating various aspects of wireless communications facilities siting, under both federal and state law;

WHEREAS, federal law establishes specified limitations and preemptions in relation to the siting of wireless communications facilities as part of the Federal Telecommunications Act of 1996 (47 U.S.C. § 332);

WHEREAS, federal law provides that no state or local statute or regulation, or other state or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service (47 U.S.C. § 253);

WHEREAS, federal law also provides that a state or local government may not deny, but shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such a tower or base station (47 U.S.C. § 1455(a));

WHEREAS, Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409") mandates that state or local government approve certain wireless communications facilities siting requests for modifications and collocations of wireless transmissions equipment on an existing tower or base station that do not result in a substantial change to the physical dimensions of such tower or base station;

WHEREAS, in October 2014, the Federal Communications Commission unanimously approved rules interpreting Section 6409 that took effect as of April 2015;

WHEREAS, under state law, a wireless collocation facility must be a permitted use, not subject to a local discretionary permit, if it satisfies certain requirements (Gov. Code, § 65850.6);

WHEREAS, under California Senate Bill 1627, local governments are required to approve collocations through a ministerial process and are prohibited from limiting the duration of permits for wireless sites to less than 10 years, absent good reason;

WHEREAS, federal and state laws impose various so-called “shot clocks” for periods that can lead to projects being deemed approved if not approved or denied within the applicable time frame;

WHEREAS, telecommunications companies have access to attach their equipment to utility poles in the public right-of-way, governed by a set of state and federal regulations;

WHEREAS, this method of attachment is increasingly popular as such companies seek to deploy so-called 5G network technology;

WHEREAS, state law establishes a framework, process, and procedures governing the attachment of telecommunications facilities to investor-owned utility poles and municipal utility poles, providing the California Public Utilities Commission (CPUC) the authority to establish and enforce rates, terms and conditions for pole attachments;

WHEREAS, telecommunications companies are authorized to erect poles and attach to investor-owned and municipal utility poles under specified cost-based rates (Pub. Util. Code, § 7901);

WHEREAS, local governments may not block utility pole attachments, but existing law authorizes them to regulate the time, manner, and place of pole attachments in the public right-of-way (Pub. Util. Code, § 7901.1);

WHEREAS, these local regulations are the vehicle for local police power/regulation;

WHEREAS, significant changes in federal and state law that affect local authority over wireless communications facilities (“WCFs”) have occurred, including but not limited to the following:

- On August 2, 2018, the United States Federal Communications Commission (“FCC”) adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a) and directed the Wireline Competition Bureau and the Wireless Telecommunications Bureau to hear and resolve all complaints on an expedited basis;
- On September 26, 2018, the FCC adopted a declaratory ruling and report and order—which is effective as of January 14, 2019—that, among other things, creates a new regulatory classification for small wireless facilities, requires state and local governments to process applications for small wireless facilities within sixty (60) days or ninety (90) days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition;

WHEREAS, given the rapid and significant changes in federal and state law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with federal and state law, the City Council desires to amend the El Monte Municipal Code, to allow greater flexibility and responsiveness to new federal and state laws in order to preserve the City’s traditional authority to the maximum extent practicable;

WHEREAS, in addition to the changes described above, new federal laws and regulations that would drastically alter local authority over wireless WCFs are currently pending, including without limitation, the following:

- On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the “STREAMLINE Small Cell Deployment Act” (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the applicable timeframes for review, require all proceedings to occur within such

timeframes, and provide a "deemed granted" remedy for a failure to act within the applicable timeframe;

- On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment;

WHEREAS, the City Council public hearing to consider this Resolution was noticed in accordance with the publication requirements set forth in Government Code Section 65090; and

WHEREAS, Government Code Sections 36934 and 36937 authorize the City adopt an Urgency Ordinance for the immediate preservation of the public peace, health, or safety.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and incorporated herein by reference.

SECTION 2. Urgency Findings.

- A. State and federal law have changed substantially since the City last adopted regulations for wireless facility installations in the City.
- B. The City lacks updated regulations as to wireless facilities in the public right-of-way and the management of applicable "shot clocks" that govern the time in which the City must approve or deny a wireless facility application.
- C. State and federal law requires local governments to act on permit applications for wireless facilities within a prescribed time period and may automatically deem an application approved when a failure to act occurs.
- D. The expeditious adoption of wireless facilities regulations are necessary to protect the City's visual character from potential adverse impacts or visual blight created or exacerbated by telecommunications infrastructure and promote access to high-quality, advanced telecommunication services for the City's residents, businesses and visitors.
- E. The adoption of this Urgency Ordinance is necessary to preserve the public health, safety, and welfare as, without such adoption, wireless facilities approved without updated regulations could create:
 1. Land use conflicts and incompatibilities between comparable facilities;
 2. Visual and aesthetic blight and public safety concerns arising from the excessive size, noise, or lack of camouflaging of wireless facilities; and
 3. Traffic and pedestrian safety hazards due to the unsafe siting of wireless facilities.

SECTION 3. Section 17.82.030 (Applicability) of Chapter 17.82 (New and Substantially Changed Wireless Facilities) of Chapter 17 (Zoning) of the El Monte Municipal Code is hereby amended by the addition of a new Subsection D, which shall read as follows:

- D. Special Provisions for Small Wireless Facilities. Notwithstanding any other provision in this Chapter 17.82, including any exemption under Section 17.82.030(B), all small wireless facilities, as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, are subject to a permit, as specified in a City Council policy to be adopted by City Council resolution. All small wireless facilities shall comply with the City Council's policy. If the policy

is repealed, an application for a small wireless facility shall be processed pursuant to this Chapter 17.82.

SECTION 4. Environmental. This Urgency Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) under the general rule that CEQA does not apply to activities which can be seen with certainty to have no effect on the environment. The proposed actions would not create any environmental impacts, therefore no additional action under CEQA is required.

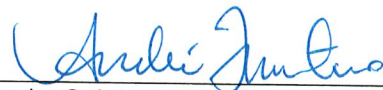
SECTION 5. Inconsistent Provisions. Any provision of the El Monte Municipal Code or appendices thereto inconsistent with the provisions of this Urgency Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to implement the provisions of this Urgency Ordinance.

SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase would be subsequently declared invalid or unconstitutional.

SECTION 7. Construction. The City Council intends this Urgency Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Urgency Ordinance shall be construed in light of that intent. To the extent the provisions of the El Monte Municipal Code as amended by this Urgency Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Urgency Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 8. Publication and Effective Date. This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council by Government Code Sections 36934 and 36937 and shall be in full force and effect upon its adoption by a four-fifths (4/5) vote of the City Council. The City Clerk shall cause this Urgency Ordinance to be published once in a newspaper of general circulation within fifteen (15) days after its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of El Monte at the regular meeting of this 8th day of January, 2019.



Andre Quintero, Mayor
City of El Monte

ATTEST:



Catherine A. Eredia, City Clerk
City of El Monte

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF EL MONTE) SS:

I, Catherine A. Eredia, City Clerk of the City of El Monte, hereby certify that the foregoing Urgency Ordinance No.2940 was passed and adopted by the City Council of the City of El Monte, signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on the 8th day of January, 2019 and that said Urgency Ordinance was adopted by the following vote, to-wit:

AYES: Mayor Quintero, Councilmembers Ancona, Martinez-Muela, Morales,
 and Velasco

NOES: None

ABSTAIN: None

ABSENT: None



Catherine A. Eredia, City Clerk
City of El Monte